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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648-BH67

Fisheries of the Northeastern United States; Omnibus Deep-Sea Coral Amendment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Announcement of availability of omnibus amendment; request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council has submitted the Omnibus Deep-Sea Coral Amendment, incorporating the Environmental Assessment and the Regulatory Flexibility Analysis, for review by the Secretary of Commerce, and is requesting comments from the public. This action would protect deep-sea corals from the impacts of commercial fishing gear on Georges Bank and in the Gulf of Maine. These proposed management measures are intended to reduce, to the extent practicable, impacts of fishing gear on deep-sea corals in New England while balancing their costs to commercial fisheries.

DATES: Comments must be received on or before *[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]*.

ADDRESSES: The Council has prepared a draft Environmental Assessment (EA) for this action that describes the proposed measures in the Omnibus Deep-Sea Coral Amendment and other considered alternatives and analyzes the impacts of the proposed measures and alternatives. The Council submitted a draft of the amendment to NMFS that includes the draft EA, a

description of the Council's preferred alternatives, the Council's rationale for selecting each alternative, and a Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA). Copies of supporting documents used by the New England Fishery Management Council, including the EA and RIR/IRFA, are available from: Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at:

<https://www.nefmc.org/library/omnibus-deep-sea-coral-amendment>

You may submit comments, identified by NOAA-NMFS-2019-0092, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0092*, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Omnibus Deep-Sea Coral Amendment NOA."

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A"

in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Policy Analyst, (978) 281-9233.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish notification in the **Federal Register** that the amendment is available for public review and comment. The Council submitted its final version of Omnibus Deep-Sea Coral Amendment to NMFS for review on June 25, 2019. NMFS has declared a transmittal date of August 20, 2019. The Council has reviewed the Omnibus Deep-Sea Coral Amendment proposed rule regulations as drafted by NMFS and deemed them to be necessary and appropriate as specified in section 303(c) of the Magnuson-Stevens Act.

Background

The coral protection zones included in this amendment were initially developed during 2010 and 2011 as part of the Council's Omnibus Essential Fish Habitat Amendment 2 (OHA2), finalized April 9, 2018 (83 FR 15240; April 9, 2018). In September 2012, the Council split the coral protection zones and associated management measures out of OHA2 into a separate omnibus amendment. On March 13 and 15, 2017, the Council held workshops in New Bedford, MA, and Portsmouth, NH, to discuss the coral zone boundaries, considering the canyon and slope zones on Georges Bank (broad zone) at the first meeting and the offshore Gulf of Maine zones at the second. On April 18, 2017, the Council chose preferred alternatives for the coral

zones to go out to public hearing. The Council held public hearings throughout New England in May of 2017, and revisited its preferred alternatives at its June 2017 meeting. On June 22, 2017, the Council took final action on the Gulf of Maine portions of the amendment, but did not select final preferred alternatives for the broad coral protection zone on Georges Bank. Instead, the Council added a new alternative for analysis that was suggested during the public hearings. Finally, on January 30, 2018, the Council selected a final preferred alternative for the broad zone and adopted the Omnibus Deep-Sea Coral Amendment.

The Council submitted the Amendment to NMFS for initial review on December 21, 2018. Due to the lapse in Federal appropriations, NMFS's review of the document was delayed. The Council submitted a revised draft of the Amendment on June 25, 2019, for final review by NMFS, acting on behalf of the Secretary of Commerce.

The Council developed this action, and the measures described in this proposed rule, under the discretionary provisions for deep-sea coral protection in section 303(b) of the Magnuson-Stevens Act. This provision gives the Regional Fishery Management Councils the authority to:

(A) Designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear; and

(B) Designate such zones in areas where deep-sea corals are identified under section 408 (this section describes the deep-sea coral research and technology program), to protect deep-sea corals from physical damage from fishing gear or to prevent loss or damage to such fishing gear from interactions with deep-sea corals, after considering long-term sustainable uses of fishery

resources in such areas.

Consistent with these provisions, the Council proposed the measures in the Omnibus Deep-Sea Coral Amendment. These measures are designed to identify and protect concentrations of corals in select areas and restrict the expansion of fishing effort into areas where corals are likely to be present. The measures also take into account long-term sustainable uses of fishery resources in the areas and the economic impacts to commercial fisheries.

Measures recommended by the Council would:

- Establish a deep-sea coral protection area on the outer continental shelf in New England waters. It would complement the Frank R. Lautenberg Deep-Sea Coral Protection Area established by the Mid-Atlantic Fishery Management Council in Amendment 16 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (81 FR 90246; December 14, 2016) as described in § 648.372. The area would run along the outer continental shelf in waters no shallower than 600 m and extend to the outer limit of U.S. Exclusive Economic Zone boundary to the east and north, and south to the intercouncil boundary as described in § 600.105(a);
- Restrict the use of bottom-tending commercial fishing gear within the designated deep-sea coral area, including: Bottom-tending otter trawls; bottom-tending beam trawls; hydraulic dredges; non-hydraulic dredges; bottom-tending seines; bottom longlines; pots and traps; and sink or anchored gillnets. The prohibition on these gears would protect deep-sea corals from interaction with and damage from bottom-tending fishing gear. Red crab pot gear would be exempt from the prohibition;
- Designate a coral protection area in an 8-mi² (21-km²) area southwest of Mount Desert Rock, a small, rocky island off the eastern Maine coast, about 20 nm (37 km) south of

Mount Desert Island, encompassing depths of 100-200 m. Vessels would be prohibited from fishing with bottom-tending mobile gear in this area. Bottom-tending mobile gear includes but is not limited to: Bottom-tending otter trawls; bottom-tending beam trawls; hydraulic dredges; non-hydraulic dredges; and seines (with the exception of a purse seine);

- Designate a coral protection area in a 31-mi² (79-km²) area on the Outer

Schoodic Ridge, roughly 25 nm (46 km) southeast of Mount Desert Island, encompassing depths of 104-248 m. Vessels would be prohibited from fishing in this area with the same bottom-tending mobile gears as identified in the Mount Desert Rock area;

- Establish provisions for vessels transiting through the coral protection areas;
- Designate the area around Jordan Basin in the Gulf of Maine as a dedicated

habitat research area; and

- Expand framework adjustment provisions in the New England fishery management plans (FMP) for future modifications to the deep-sea coral protection measures.

The Magnuson-Stevens Act allows us to approve, partially approve, or disapprove measures recommended by the Council in an amendment based on whether the measures are consistent with the FMPs, plan amendment, the Magnuson-Stevens Act and its National Standards, and other applicable law. The Council develops policy for its fisheries and we defer to the Council on policy decisions unless those policies are inconsistent with the Magnuson-Stevens Act or other applicable law. As such, we are seeking comment on whether measures in Omnibus Deep-Sea Coral Amendment are consistent with the FMPs, the Magnuson-Stevens Act and its National Standards, and other applicable law. Through this notice, NMFS seeks comments on Omnibus Deep-Sea Coral Amendment and its incorporated documents through the

end of the comment period stated in the DATES section of this notice of availability (NOA). Following the publication of this NOA a rule proposing the implementation of measures in this amendment is anticipated to be published in the **Federal Register** for public comment. Public comments must be received by the end of the comment period provided in this NOA of the Omnibus Deep-Sea Coral Amendment to be considered in the approval/disapproval decision. All comments received by the end of the comment period on the NOA, whether specifically directed to the NOA or the proposed rule, will be considered in the approval/disapproval decision. Comments received after the end of the comment period for the NOA will not be considered in the approval/disapproval decision of the Omnibus Deep-Sea Coral Amendment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 21, 2019.

Jennifer M. Wallace,
Acting Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

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